

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Case No. 19-cv-01984

Plaintiff,

v.

Judge: Lindsay C. Jenkins

DAY PACER LLC, f/k/a College
Criteria LLC, also d/b/a Edutrek,
EdSoup, Our School Search, College
Info and Degree Spots and successor
in interest to EduTrek, a
limited liability company; et al.,

Defendants.

**MOTION TO ADJOURN SEPTMEBER 26, 2023 STATUS
HEARING UNTIL AFTER OCTOBER 20, 2023**

**[Co-Defendant Estate of David Thorpe Cumming has no
objection to this motion. Plaintiff Federal Trade Commission
does not oppose this motion and has a suggested alternative]**

Defendants, Day Pacer LLC, EduTrek L.L.C., Raymond Fitzgerald and Ian Fitzgerald
(collectively “Moving Defendants”), hereby move to adjourn the September 26, 2023, status
hearing to after October 20, 2023.

By Minute Order dated September 1, 2023, the Honorable Lindsay C. Jenkins scheduled a status hearing for September 26, 2023, to resolve the outstanding matters concerning the appropriate civil penalty. Pamela Fitzgerald, the wife of Raymond Fitzgerald who is counsel for the Moving Defendants, had a breast cancer operation on August 4, 2023. On September 12, 2023, the radiation team at the University of Utah Huntsman Hospital scheduled Mrs. Fitzgerald to commence radiation treatment on September 26, 2023, to continue for eighteen (18) consecutive weekdays thereafter, i.e., through October 20, 2023.

Moving Defendants communicated both with counsel for co-defendant Estate of David Thorpe Cumming and counsel for plaintiff Federal Trade Commission prior to making this motion. Counsel for co-defendant, the Estate of David Thorpe Cumming, has expressed that they have no objection to such adjournment. Counsel for the Federal Trade Commission has expressed that they would not oppose Moving Defendants' motion for an adjournment. Counsel for the Federal Trade Commission also stated that they would be amenable, as an alternative, to have the parties appear remotely on a date earlier than late October for the status hearing.

CONCLUSION

Moving Defendants respectfully request that the Court adjourn the status hearing scheduled for September 26, 2023, until after October 20, 2023.

Dated: September 17, 2023

Butler, Fitzgerald, Fiverson & McCarthy PC

By: 
Raymond Fitzgerald

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Chicago, IL 60603

9 East 45th Street, Ninth Floor
New York, NY 10017

(917) 301-9006
(212) 615 -2215 (fax)
rfitzgerald@bffmlaw.com

CERTIFICATE OF SERVICE

I certify that on September 17, 2023, I filed the Motion to Adjourn The September 26, 2023 Status Hearing Until After October 20, 2023 and accompanying Declaration, with the Clerk of the Court via ECF. I also certify that this Motion and attached Declaration are being served on counsel for all other parties at their respective email addresses via ECF.

To: Andrew Wesolowski, Esq.
awesolowski@ftc.gov
Attorney for Plaintiff Federal Trade Commission

Mark Glassman, Esq.
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Attorney for Plaintiff Federal Trade Commission

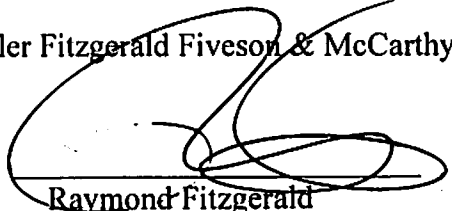
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**DECLARATION OF RAYMOND FITZGERALD IN SUPPORT OF MOTION OF
DEFENDANTS DAY PACER LLC, EDUTREK L.L.C., RAYMOND
FITZGERALD AND IAN FITZGERALD TO ADJOURN SEPTEMBER 26, 2023
STATUS HEARING UNTIL AFTER OCTOBER 20, 2023**

I, Raymond Fitzgerald, declare under penalty of perjury that the following is true and correct:

1. I am a member of the Bar of this Court and a member of Butler Fitzgerald
Fiveson & McCarthy A Professional Corporation, attorneys for defendants Day Pacer LLC,
EduTrek L.L.C., Raymond Fitzgerald and Ian Fitzgerald ("Moving Defendants").

2. I make this declaration in support of the motion of Moving Defendants to adjourn the September 26, 2023, status hearing scheduled in this Court's Minute Order dated September 1, 2023.

3. The reason for this request to adjourn the September 26, 2023, is that Pamela Fitzgerald, the wife of Raymond Fitzgerald who is counsel for the Moving Defendants, had a breast cancer operation and, as part of the cancer treatment protocol, Mrs. Fitzgerald will be undergoing radiation treatment for nineteen (19) consecutive weekdays commencing on September 26, 2023, through October 20, 2023.

4. On August 4, 2023, Mrs. Fitzgerald underwent an operation to remove an invasive carcinoma of the right breast. Annexed as Exhibit A are redacted copies of Mrs. Fitzgerald's MyChart pages. As a result of the tissue removed during the operation, Mrs. Fitzgerald's doctors recommended that she undergo radiation treatment. On September 12, 2023, at a planning session for the radiation treatment, the radiation team at the University of Utah Huntsman Hospital scheduled Mrs. Fitzgerald to commence radiation treatment on September 26, 2023, to continue for eighteen (18) consecutive weekdays thereafter. Annexed as Exhibit B are copies of Mrs. Fitzgerald's MyChart pages concerning that planning session.

5. The radiation team scheduled September 26, 2023, as the commencement date of the radiation treatment without any input from my wife or me. In fact, to the extent we expressed any preference, we told the radiation team that we would like the radiation treatment to commence even sooner, i.e., as soon as possible. Although the treatment on September 26, 2023, is scheduled for 12:45 pm, we will not know the times of the treatments on the subsequent eighteen (18) weekdays until the radiation team tells us on September 26, 2023.

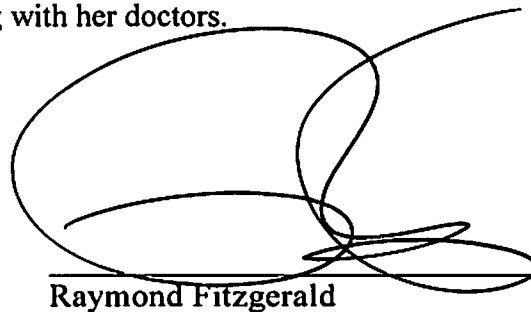
6. Obviously, I want to be with my wife of forty-six (46) years at the hospital for all of the radiation treatments.

7. Therefore, I respectfully request that the Court grant Moving Defendants' request to adjourn the September 26, 2023, status hearing until after October 20, 2023.

8. Counsel for the Federal Trade Commission has suggested, as an alternative, that the status hearing be scheduled remotely for a date earlier than October 20, 2023. Although I have a strong preference for in-person court appearances, especially the first one, we do not oppose counsel's suggestion because of the courtesy they have shown in agreeing not to oppose this request.

9. If the Court has any questions concerning the scheduling of my wife's radiation treatment, she will consent to the Court speaking with her doctors.

Dated: September 17, 2023

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a series of loops and a horizontal line at the bottom.

Raymond Fitzgerald

EXHIBIT A

EXHIBIT A

9/15/23, 10:57 AM

MyChart - Appointments/Admissions

Name: Pamela E Fitzgerald | DOB: 11/10/1943 | MRN: 20228539 | PCP: Thomas L Miller, MD | Legal Name: Pamela E Fitzgerald

Appointments/Admissions (Pamela)



Print your upcoming appointments

Safety Information

At U of U Health, your safety is our top priority. Masks are optional in most clinical locations. To protect our highly immunocompromised patients, masks will still be required in some areas.

[Click HERE to learn more.](#)

AUG Anesthesia Event

4 Samantha Rubright
Huntsman Cancer Hospital
2023 Operating Room

AUG Hospital Outpatient Visit

4 Huntsman Cancer Hospital
Radiology
2023

Oldest record loaded from 8/4/2023

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EXHIBIT B

EXHIBIT B

SEP Procedure Visit
12 Kristine Kokeny
2023 Huntsman Cancer Radiation
Oncology

Name: Pamela E Fitzgerald | DOB: 11/10/1949 | MRN: 20228539 | PCP: Thomas L Miller, MD | Legal Name: Pamela E Fitzgerald

Appointment Details (Pamela)

Notes

Nursing Notes

Laurene at 09/12/23 1400

Met with pt and spouse after CT sim for right breast treatment. Reviewed learning needs. Discussed clinic flow and SE's of radiation to the breast i.e. skin care and changes and fatigue. Pt to undress above the waist with the gown open to the back. Verbalized understanding of information given. Verification simulation and treatment scheduled for 9.26, Tuesday at 12:45pm. Pt to receive 19 treatments. Patient discharged from our clinic ambulatory, without any complaints. Patient has contact information for clinic and after hours.

Radiation SIM Note

Kristine Kokeny at 09/12/23 1400

SIMULATION NOTE:
09/12/2023

UNIVERSITY OF UTAH, DEPARTMENT OF RADIATION ONCOLOGY
Huntsman Cancer Hospital
1950 Circle of Hope, Room 1440, Salt Lake City, Utah 84112-5560,
801-581-2396, Fax 801-585-2666

SIMULATION REPORT

ATTENDING PHYSICIAN: Kokeny, Kristine, MD

IDENTIFICATION: Pamela Fitzgerald is a [REDACTED] year-old woman with stage IA (pT1c pN0) invasive carcinoma of the right breast s/p right lumpectomy and SLNB on 8/4/2023 revealing invasive carcinoma with ductal and lobular features measuring [REDACTED] cm, grade 3, with no LVI and presence of high grade DCIS measuring approximately [REDACTED] cm, -SM, and 0/1 +SLNs, ER+/PR+/HER2-. Oncotype DX RS of 37 but given age and comorbidities, pt will not receive adjuvant chemo. Plan for AI after RT complete.

Plan: [REDACTED]
[REDACTED]

Prior RT: none

Surgeon: Dr. Rosenthal
Med Onc: Dr. Wei
Systemic: no concurrent
Protocol: none

Ms. Fitzgerald was brought into the CT simulator and placed in the headfirst, supine position with her arms raised. Immobilization was obtained by using an alpha cradle. Wires were placed at the clinical borders of right breast and marking the lumpectomy scar. Serial CT images were obtained at the [REDACTED] mm slice thickness throughout the entirety of the involved field which included the chest. Under CT guidance, an isocenter was placed and field borders were set. The CT scan will be used to delineate radiation therapy treatment volumes, critical structures and for radiation treatment planning. Skin Tattoos were applied to be used for daily laser alignment. The simulation was well tolerated with no adverse consequence.

Kristine E. Kokeny, M.D.
Professor
Department of Radiation Oncology
Huntsman Cancer Hospital
University of Utah
801-213-8409

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